88-1067

NO.

IN THE

# Supreme Court of the United States

October Term, 1988

JAMES N. FLEMING,

Petitioner,

v.

W. BEDFORD MOORE, III, et al,

Respondents.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

## PETITION FOR CERTIORARI

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## The Question Presented For Review

Without ruling on the issues: (1) whether such docketing was authorized by statute and (2) whether such statutory authorization would violate the due process clause or the equal protection clause of the Fourteenth Amendment, may the state's highest court arbitrarily affirm summary dismissal, with prejudice, of land owner's slander of title action to recover damages resulting from the docketing of a judgment after execution thereof had been suspended pending appeal?

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## The Parties To The Proceeding

The petitioner is James N. Fleming. The respondents are W. Bedford Moore, III and his attorneys: Lloyd T. Smith, John K. Taggart, III, Melvin E. Gibson, Jr., and Thomas E. Albro.

## Opinions Below

The findings of the trial judge, communicated in his May 18, 1987 letter to counsel are set out in the appendix at pages 1 and 2. Otherwise, no court has delivered an opinion in this case.

## Grounds On Which Jurisdiction Is Invoked:

The order of the trial court (the Circuit Court of the City of Charlottesville) sustaining demurrer and dismissing the case is dated and was entered on the 4th day of June 1987.

(App. 58) The order of the state's highest court (Supreme Court of Virginia), "finding no reversible error in the judgment appealed from" and refusing the petition for appeal, is dated and was entered on the 18th day of November 1988. (App. 3).

The order of the Supreme Court of Virginia denying the petition for a rehearing is dated the 13th day of January 1989. (App. 5). By order of The Chief Justice dated the 10th day of April 1989, the time for filing this petition for a writ of certiorari was extended to and including May 13, 1989. Title 28 United States Code, Section 1257(3) is believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari.

## Constitutional Provisions and Statutes Involved

Constitution of the United States:

Amendment XIV

*** [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Code of Virginia:

Section 8.01-458

Every judgment for money rendered in this Commonwealth by any state or federal court or by confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city where such land is situated; * * *

Section 8.01-461

An abstract of any judgment shall, upon request to the clerk of the court wherein the judgment is rendered, be granted to any person interested immediately upon its rendition, subject to the future action of the court rendering the same.

Section 8.01-676(A)

Upon the motion of any party who indicates his intention to appeal to the Supreme Court, the court entering the judgment to be appealed from shall, or in divorce actions may, prior to the expiration of thirty days from its entry, suspend the execution of such judgment so long as the petitioner timely prosecutes the appeal and thereafter so long as the matter is under consideration by the Supreme Court; provided such party or someone for him shall file an appeal bond in the clerk's office of the trial court within the time prescribed by the trial court, with surety to be approved by the judge or clerk of such court, in the penalty of one thousand dollars or such greater sum as the court may require, reciting such judgment and the intention of such person to present such petition, which bond shall be conditioned to perform and satisfy the judgment or the part thereof proceedings on which are stayed, in case such judgment or such part be affirmed in whole or in part, or the appeal not be timely prosecuted, or the appeal be denied, and which bond shall also be conditioned to pay all damages, costs, and fees which may be awarded against the appellant in the Supreme Court and all actual damages incurred in consequence of the suspension; ***

Rules of Supreme Court of Virginia:

Rule 1:1

> All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer.
> * * *

## Preliminary Statement

This case illustrates the willingness or inclination of Virginia's judicial system to permit, over and beyond such remedy as the law allowed, the harassment and oppression of this petitioner whose only "transgression" was his violation of the spirit of the 1847-48 statute which proscribed a Negro's use of provoking language to a white person. For such "transgression", the respondent Moore recovered a monetary judgment against the petitioner. It is here contended that, as limited by Fleming's right of appeal, Moore's judgment allowed him only the

right to have bond with approved surety and that, such bond with surety having been given, the law did not allow Moore to docket the judgment as a lien against the real properties of the petitioner and thereby to injure petitioner in his occupation of buying, developing and selling real estate.

The petitioner and respondents herein will be similarly named in a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, which will be filed on or before 31 May 1989, challenging the underlying defamation judgment as violative of the Thirteenth Amendment to the Constitution and legislation enacted for its enforcement. This petition for a writ of certiorari to the Supreme Court of Virginia will present no challenge to the underlying defamation judgment as, following remittitur, it was finally

entered and affirmed by the state courts. Counsel suggest that, for the convenience of the Court, this petition will be considered with (and as if filed after) the related petition for certiorari to the United States Court of Appeals for the Fourth Circuit.

## STATEMENT OF THE CASE

On June 3, 1983 in an action by the respondent W. Bedford Moore, III, for alleged defamation, the Circuit Court of Albemarle County, Virginia entered judgment on a jury verdict against James N. Fleming (the instant petitioner) for $100,000 in compensatory damages and $250,000 in punitive damages together with interest on the $250,000 award at the rate of 12% per annum from January 16, 1976. (App. 24-30). The judgment order suspended execution to permit timely appeal to the Supreme Court of Virginia if

within thirty days appeal bond in penalty of $250,000, with surety approved by the trial judge, would be filed. (App. 29). Petitioner complied with that requirement (App. 30-37) and with all subsequent requirements of bond and surety (App. 39-41; 45-52; 52-55) for payment and satisfaction of the judgment which ultimately was reduced to $233,333.34, with interest from 13 May 1985. (App. 41-45). Securities in principal sums totaling $258,700 have been liquidated by or at the instance of the respondents who have received the proceeds in payment or partial payment of the defamation judgment.

Petitioner is, and at all times mentioned herein was and had been, a realtor; and through the years a considerable part of his income had come from his buying and selling real estate. (App. 21-22). On and prior to 6 June 1983

petitioner was the owner of his home and of 16 other real properties in the independent City of Charlottesville, Virginia, six of which he subsequently sold and conveyed with general warranty and English covenants of title. (App. 12-13).

On June 6, 1983 the respondents caused the judgment of June 3, 1983 to be docketed in the Clerk's Office of the Circuit Court of the City of Charlottesville, giving the appearance of a lien against petitioner's real properties for $350,000 with interest thereon at 12% per annum from 3 June 1983 plus pre-judgment interest on $250,000 at the same rate from 16 January 1976 to 3 June 1983, and court costs. (App. 9-10; 13-14).

Notwithstanding petitioner's demand therefor, the respondents yet fail and refuse to release or cancel said judgment

docket entry, except as next stated. On 2 May 1986, as a means of terminating an action then pending styled Kevin L. Smith v. Chicago Title Insurance Company, et al., in which the court on its own motion had interpleaded this petitioner and the respondent Moore, the respondents hereto caused said judgment to be "Released only as to two parcels, namely, TM [tax map] 29 parcel 119 known as 410 Dice Street conveyed by James N. Fleming to Kevin L. Smith by deed recorded in D.B. 441, p. 810; and TM 29 parcel 122 known as 406 Dice Street conveyed by James N. Fleming to Kevin L. Smith by deed recorded in D.B. 441, p. 815 and no other parcels." (App. 20-21).

On 24 November 1986, petitioner filed action for slander of title, alleging in his motion for judgment that the respondents had maliciously caused the judgment against him to be docketed and to

remain so docketed to give the false appearance of a lien encumbering his real property, that they had done so to the end of harassing and oppressing him and effecting his financial ruin, and that thereby they had caused him to sustain considerable expense and loss of income. (App. 18-23).

As defendants, the instant respondents filed a demurrer and motion to dismiss. (App. 56-58). The trial court on 4 June 1987 dismissed the action for slander of title, with prejudice and without leave to the plaintiff to amend. (App. 58-61).

Petition for appeal, timely filed, was refused by the Supreme Court of Virginia on 18 November 1988 without stated reason other than "finding no reversible error in the judgment appealed from". (App. 3). Thereupon on 2 December 1988, petitioner filed his petition for

rehearing (App. 62) in which the "crucial issue" was re-stated, viz: "Absent statutory basis for attachment, may a judgment become a lien while execution thereon is suspended?" (App. 63).

**When and How the Federal Questions Were Raised**

As a part of the petition for rehearing, and its supplement, counsel filed with the Supreme Court of Virginia the responses received from 86 of the 121 clerks of the circuit courts of the state to these four inquiries:

1. Do you delay docketing a judgment for 21 days?
2. Do you delay issuing an abstract of judgment for 21 days?
3. Do you docket a judgment if execution thereon is suspended?
4. Do you issue an abstract of judgment if execution thereon is suspended? (App. 64).

Reflecting the evidence then available, the petition for rehearing, as supplemented on 14 December 1988, showed: (1) that the clerks at New Kent, Petersburg, Northumberland, and Winchester will neither docket nor issue an abstract during the 21 days when the judgment remains under the control of the court or while execution thereon is suspended; (2) that at least 41 other clerks refrain from docketing or issuing abstracts of judgments on which execution is suspended; and (3) that at least 25 clerks will docket and issue abstract of a judgment notwithstanding the suspension of execution thereon. (App. 65-66; 76-84) Further, the supplement showed that the abstract of the libel judgment against the instant petitioner had been issued contrary to the policy of the Clerk of the Circuit Court of the County of Albemarle where the libel action had been tried. (App. 72-75).

The petition for rehearing submitted to the Supreme Court of Virginia three reasons why an appeal should be allowed, (App. 69-71), viz:

I

> In violation of the Fourteenth Amendment to the Federal Constitution, the petitioner is denied the equal protection of the laws because suspension of execution of the defamation judgment entered against him by the Circuit Court of Albemarle County gave no protection to the petitioner's clear title to his real estate; although suspension of execution on a similar judgment entered by any one of at least 45 other circuit courts would have fully protected the judgment debtor's clear title to real estate located in another jurisdiction while his appeal was pending.

II

After petitioner had given bond with approved surety, conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of the suspension mandated by statute, the cloud of the apparent lien of a judgment for more than $500,000 and the consequent diminution of his ability to sell, trade or encumber his real estate much of which he had acquired for such purposes in the regular course of his business, was a deprivation of his property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution.

III

> The election of [the state's highest] court to refuse the petition for appeal, without stating and publishing its reasons for declining to resolve the varied and conflicting official interpretations of the effect of suspension of execution, would make deliberate, final, and conclusive the action of the state by which petitioner is deprived of property without due process of law and is denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Federal Constitution.

Rehearing was denied by order of the Supreme Court of Virginia entered on 13 January 1989. (App. 5).

## REASONS FOR ALLOWANCE OF THE WRIT

### I

### The Federal Question Was Timely Raised

After stating the general rule that the attempt to raise a federal question after judgment upon a petition for rehearing comes too late, this Court, in Herndon v. Georgia, 295 U.S. 441, 444 (1935), articulated this exception:

> There is no doubt that the federal claim was timely if the ruling of the state court could not have been anticipated and a petition for rehearing presented the first opportunity for raising it. [Citations omitted]
>
> * * *
>
> The whole point, therefore, is whether the ruling here assailed should have been anticipated.

Petitioner could not have anticipated that, without stated reason as mandated by section 6 of Article VI of the Constitution of Virginia,[1] the Supreme

---

[1] "When a judgment or decree is reversed, modified, or affirmed by the Supreme Court, or when original cases are

Court of Virginia would have left unanswered the first question presented in his petition for appeal: Whether, absent statutory basis for attachment, a judgment may become a lien while execution thereon is suspended. That question, involving statutory construction, was clearly one of first impression[2] and one which, in the interest of uniform administration of justice, the court should have answered for the benefit of clerks, litigants, and attorneys. As was said in Pulliam v. Allen, 466 U.S. 522, 541 (1984):

> It is no longer proper to assume that a state court will not act to prevent a federal constitutional deprivation . . . [Emphasis added]

In Great Northern R. Co. v. Sunburst Oil and Ref. Co., 287 U.S. 358, 367 (1932), this Court held that the general

---

resolved on their merits, the reasons for the Court's action shall be stated in writing and preserved with the record of the case. * * *"

[2] See App. 62.

rule does not apply "where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a federal right." Certiorari jurisdiction was held to flow from the challenge to the constitutional validity of the ruling in that case whereby the statute was "adjudged to mean one thing for some cases and another thing for others". (Id.).

Here, because of the refusal of the Supreme Court of Virginia to rule whether a judgment may be docketed as a lien against real property while execution thereon is suspended, the Virginia statutes mean one thing for some cases and another thing for others. See App. 76-84. As in Great Northern, this petitioner could not object to the deliberate refusal of the court below to resolve the varying inter- pretations of the relevant statutes in advance of the event.

II

**No Independent State Law Ground Justifies The Silence of the Court Below**

Other than the ruling (#5) "Plaintiff's action is not barred by the Statute of Limitations" (App. 1-2; 59-60), the findings and ruling of the trial court are specious.

Docketing of the Judgment was not an absolutely privileged publication as the ruling (#4) suggests.

> "The reason for the rule of absolute privilege in judicial proceedings is to encourage unrestricted speech in litigation. [Citation omitted] The public interest is best served when individuals who participate in law suits are allowed to conduct the proceeding with freedom to speak fully on the issues relating to the controversy." Donohoe Construction Co. v. Mount Vernon Associates, 235 Va. 531, 537, 369 S.E.2d 857 (1988).

In Donohoe, the predicate for the slander of title action was the memorandum of mechanics lien which the statute required to be recorded before suit to enforce the lien could be filed. Here, the judicial

proceeding had terminated with "such remedy as the law allows" (Id.): i.e., a judgment for the plaintiff on which execution was suspended pending appeal.

The trial judge made seven findings or rulings. (App. 1-2). His rulings (#1) "The defendant did not publish false or defamatory words" and (#2) "Docketing of the Judgment did not disparage plaintiff's property" are mere ipsi dixit; without evidence, without authority, and without reasoning. Moreover, they run counter to Coley v. Hecker, 206 Cal. 22, 272 P. 1045 (1928) which is on "all fours" with the petitioner's case and to the other opinions listed in 39 ALR 2d at 843-45 in support of this general statement of the law:

> The wrongful filing for record of a document which casts a cloud upon another's title to or interest in realty is clearly such an act of publication as to give rise to an action for slander of title, if provable damages result.

See, also, 39 ALR 2d 840, 855, Section 6:

> The few cases which have considered the matter have agreed that the absolute privilege attached to matters in a judicial proceeding does not extend to protect one wrongfully recording an unfounded claim against the property of another.

It is generally considered that a judgment with execution suspended does not become a lien and should not be docket as a lien until, as is expressed in 28 U.S.C. 1983, it has "become final by appeal or expiration of time for appeal".

Section 8.01-455 of the Code of Virginia did not provide petitioner a remedy as the ruling (#6) suggests. In pertinent part, Section 8.01-455 says:

> "A defendant in any judgment . . . may, on motion, after ten days' notice thereof to the plaintiff in such judgment . . . apply to the court in which the judgment was rendered, to have the same marked satisfied, and upon proof that the judgment has been paid off or discharged, such court shall order such satisfaction to be entered * * *"

Obviously, while his appeals were pending,

the petitioner could not attempt to prove that the judgment had been "paid off or discharged".

If the respondents could be heard to argue that the posting of the petitioner's appeal bonds was the equivalent of payment or discharge of the judgment warranting release of the docket entry, then Virginia Code section 8.01-454 would have made it "The duty of the judgment creditor . . . to cause such payment, or satisfaction, . . . to be entered within thirty days . . . on such judgment docket".

The finding (#3) that the plaintiff did not suffer special damages is no more than an arbitrary pre-trial contradiction of the allegation of special damages made in paragraphs 14 through 19 of the Motion for Judgment (App. 21-23).

The conclusion (#7) that the defendant attorneys are not liable to plaintiff does not offset the assertion of

Moore's presumed liability which he may or may not seek to avoid by pleading that he did not direct his attorneys to docket the judgment or that he docketed the judgment upon advice of his attorneys.

## III

### The Oppressive Abuse of State Power Violates The Fourteenth Amendment

When they docketed the judgment, the respondents intended to discourage the acceptance of an encumbrance on petitioner's properties as indemnification of sureties on his appeal bond. (App. 18-23). For his first appeal in the defamation action (Fleming v. Moore, 221 Va. 884, 275 S.E.2d 632 (1981)) petitioner's bond, secured by one of his properties, had been accepted as sufficient. (App. 7-8). Upon the entry of judgment on the second verdict, the respondents caused it to be docketed in order to make it impossible (and they did

make it difficult) for petitioner to obtain surety on his appeal bonds. Docketing the judgment was a tactic to prevent petitioner's exercise of his right to appeal. The continuing refusal of cancellation or release yet prevents the petitioner from pursuing his vocation of buying, developing and selling real estate, notwithstanding the elimination of pre-judgment interest, the remittitur of one-third of the awards, and the liquidation of securities by which satisfaction of conditions of appeal bonds was assured.

The due process and equal protection requirements of the Fourteenth Amendment prohibit Virginia: (1) from clouding the title to realty with a "suspended" judgment which would not cloud the title to personalty; (2) from clouding the title to realty with a "suspended" judgment recovered in certain, randomly and

arbitrarily selected, counties and cities while exempting title to realty from the cloud of a "suspended" judgment recovered in other, randomly and arbitrarily selected, counties and cities; and (3) from clouding the title to petitioner's realty with a "suspended" judgment recovered in a county where "suspended" judgments do not and may not constitute a cloud on the title of any other person's realty, wheresoever situated.

Therefore, the respondents had no constitutionally permissible right to docket the judgment against the petitioner while execution thereon was suspended; and petitioner has the same right to prosecute his action for slander of title as was exercised in Ross v. Pynes, 7 Va (3 Call) 568 (1790), and in Donohoe Construction Co. v. Mount Vernon Associates, supra.

**Denial of Equal Protection**

The controlling constitutional principal was stated in Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920) (which has been cited by this Court in a line of subsequent cases), viz:

> [T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

In Royster, the Court indicated that the arbitrary discrimination here complained of, although resulting from legislative inadvertence, is no less constitutionally impermissible:

> It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect; and none the less because it is probable that the unequal operation . . . was due to inadvertence rather than design.

(253 U.S. at 416).

However, as was pointed out in the petition for rehearing (App. 70-71), the refusal of the Supreme Court of Virginia to resolve the statutory ambiguities made deliberate the state-imposed discrimination of which petitioner complains.

> One must ever be aware that the Constitution forbids "sophisticated as well as simple minded modes of discrimination."

Reynolds v. Sims, 377 U.S. 533 (1964).

Denial Of Due Process Of Law

In more than one respect, the instant case is similar to Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) where, for the Court, Justice Blackmum wrote:

> The issue in this case is whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure.

Over her personal signature (App. 75), the Clerk of the Circuit Court of

Albemarle County indicates that the policy or practice of her office was violated by her deputy's issuance of the abstract of the defamation judgment notwithstanding the suspension of execution pending appeal. It would be fairly presumed that the deputy clerk and the respondent attorneys (whose offices are located in the same city as is the Albemarle County courthouse) were familiar with the clerk's policy of fully protecting the rights of a defendant, upon his giving supersedeas bond with approved surety, to remain in control of his property and to continue to transact his normal business affairs while his appeal from the judgment against him is pending. Nevertheless, it is apparent that the respondent attorneys did importune a deputy clerk to issue the abstract and thereupon they did docket the defamation judgment in the office of the Clerk of the Circuit Court of the City of

Charlottesville and thus they did deprive and they continue to deprive petitioner of his real property rights,without due process of law.

In Logan, the Court noted its holding in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) that a cause of action is a species of property protected by the Fourteenth Amendment's Due Precess Clause and, in footnote 4, referred to Martinez v. California, 444 U.S. 277, 8-281-282 (1980) and its notation that "[a]rguably," a state tort claim is a "species of 'property' protected by the Due Process Clause." Citing, inter alia, Bodie v. Connecticut, 401 U.S. 371, 380 (1971), the Court held:

> [T]he Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be "the equivalent of denying them an opportunity to be heard upon their claimed right[s]."

(455 U.S. at 429-30)

> [H]aving made access to the courts an entitlement or a necessity, the State may not deprive someone of that access unless the balance of state and private interests favors the government scheme.

(Id., footnote 5)

> The hallmark of property, the Court has emphasized, is an entitlement grounded in state law, which cannot be removed except "for cause".

(455 U.S. at 430)

> To put it as plainly as possible, the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement.

(455 U.S. at 434)

## CONCLUSION

For the foregoing reasons, petitioner prays that this petition for a writ of certiorari will be granted.

Respectfully submitted,

JAMES N. FLEMING, Petitioner

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1988

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JAMES N. FLEMING,

Petitioner,

v.

W. BEDFORD MOORE, III,

Respondent.

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ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

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# APPENDIX
# TO
# PETITION FOR CERTIORARI

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COMMONWEALTH OF VIRGINIA

Twelfth Judicial Circuit

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May 18, 1987

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Re: James N. Fleming
v.
W. Bedford Moore, III, et al
Law No. 3633

Gentlemen:

After the hearing on May 13, 1987, the Court finds as follows:

1. The defendant did not publish false or defamatory words.

2. Docketing of the Judgment did not disparage plaintiff's property.

3. The defendant did not suffer special damages.

4. Docketing of the Judgment is an absolutely privileged publication.

5. Plaintiff's action is not barred by the Statute of Limitations.

6. Plaintiff failed to take advantage of the relief afforded by Section 8.01-455, Code of Virginia.

7. Defendant attorneys for defendant, Moore, are not liable to plaintiff but may have been liable to defendant, Moore, had they failed to docket the Judgment.

In view of the foregoing, the request that the demurrer be sustained will be granted and the plaintiff's motion for judgment dismissed. No good purpose will be served by granting the plaintiff leave to amend.

Mr. Gibson will prepare an Order to carry out the above.

Yours very truly

s/D. W. Murphey
D. W. Murphey
Judge Designate

DWM:jw

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 18th day of November, 1988.

James N. Fleming, Appellant,

against Record No. 871014
Circuit Court No. 3633

W. Bedford Moore, III, et al., Appellees.

From the Circuit Court of the City of Charlottesville

Upon review of the petition for appeal, the brief in opposition, the record in this case, and argument of counsel, and having considered the motion for sanctions, the counter-motion for sanctions, the respective motions to strike, and the motion for an extension of time, and finding no reversible error in the judgment appealed from, the petition for appeal is refused and the motions are denied.

Justice Thomas took no part in the consideration or disposition of this matter.

A Copy,

Teste:

/s/ David B. Beach

Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 13th day of January, 1989.

James N. Fleming, Appellant,

against Record No. 871014
Circuit Court No. 3633

W. Bedford Moore, III, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 18th day of November, 1988 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Thomas took no part in the consideration or decision of this case.

A Copy,

Teste:

/s/ David B. Beach

Clerk

This bond is secured by the property Virnita Court Apartments, located at 800 Rose Hill Drive, Charlottesville, Va., owned by the principal, and to which the principal makes oath that the equity in said property is in excess of $200,000.00, and that he assigns the sum of the bond to the Commonwealth of Virginia as surety on this bond.

s/ James N. Fleming

Witness: s/ Shelby J. Marshall, Clerk

KNOW ALL MEN BY THESE PRESENTS, That we James N. Fleming, principal, and James N. Fleming, individual owner property 800 Rose Hill Drive surety, are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of Twenty Thousand and 00/00--- Dollars, to the payment whereof well and truly to be made we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents. And we hereby waive the benefit of our homestead exemptions as to this obligation.

Sealed with our seals and dated this 10 day of May, nineteen hundred and Seventy eight.

THE CONDITION of this obligation is such that, whereas the above bound principal, intends to petition the Supreme Court of Virginia, for a writ of error to a judgment, decree or order of the Circuit Court of the County of Albemarle pronounced on the 28 day of April, 1978;

NOW, THEREFORE, if the said obligors shall fully perform and satisfy the aforesaid judgment, decree or order in case the same shall be affirmed, or the appeal, writ of error or supersedeas shall be dismissed, and shall also pay all damages, costs and fees which may be awarded against or incurred by said petitioners in the appellate court, and all actual damages incurred in consequence of the supersedeas, then this obligation

shall be void; otherwise, to remain in full force and effect.

s/ James N. Fleming (SEAL)

_____ (SEAL)

_____ (SEAL)

Signed, sealed and acknowledged by each of the above named obligors before me this 10th day of May, 1978.

s/ Shelby J. Marshall

Clerk

# A B S T R A C T  O F  J U D G M E N T

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

PLAINTIFF W. BEDFORD MOORE, III

ATTORNEY, P. Q. THOMAS ALBRO

DEFENDANT JAMES N. FLEMING

ATTORNEY, P. D. _____

Amount of Judgment and Date from which it Bears Interest or Alternative Value of Any Specific Property Recovered

$350,000.00 plus costs

Interest at the rate of 12% per annum

on the amount of $250,000.00 from

January 16, 1976

DATE OF JUDGMENT: June 3, 1983

DATE OF DOCKETING: June 6, 1983

TIME OF DOCKETING: 1:57 pm

CAN HOMESTEAD BE CLAIMED? _____

COURT IN WHICH RENDERED Albemarle County Circuit

AMOUNT OF COSTS RECOVERED $_____

CREDITS $_____

EXECUTIONS: DATE _____ NATURE_____

TO WHOM DIRECTED _____

NATURE OF RETURN _____ADDITIONAL COSTS____

The foregoing is true abstract of a judgment duly docketed in the Clerk's Office of the Circuit Court for the County of Albemarle on the 6th day of June, 1983 in Judgment Lien Docket Number 18 at Page 677.

TESTE: SHELBY J. MARSHALL, CLERK

BY: s/ Terri M. Barnett
Deputy Clerk

W. BEDFORD MOORE, III

vs.

JAMES N. FLEMING

Received, Docketed and indexed this 6th day of June, 1983, at 3:15 p.m. in the Circuit Court Clerk's office of the City of Charlottesville Va. in J.L.D. 17, pg 37.

s/ Paul E. Garrett,
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF CHARLOTTESVILLE

JAMES N. FLEMING,

Plaintiff,

v.

W. BEDFORD MOORE, III
Shack Mountain - Highway 657
Albemarle County, VA

THOMAS E. ALBRO
105-109 East High Street
Charlottesville, VA

MELVIN A. GIBSON, JR.
105-109 East High Street
Charlottesville, VA

JOHN K. TAGGART, II
105-109 East High Street
Charlottesville, VA

LLOYD T. SMITH, JR.
105-109 East High Street
Charlottesville, VA,

Defendants.

MOTION FOR JUDGMENT
[Filed November 24, 1986]

The plaintiff moves the Court for judgment for the sum of $750,000 against the defendants, jointly and severally, for their unjust, malicious and unlawful

slander of the title of the plaintiff to certain real properties in the City of Charlottesville, as hereinafter shown, and the resulting injuries and damages to the plaintiff.

I

1. On and prior to 6 June 1983, plaintiff was and still is the owner in fee of certain real properties in the City of Charlottesville, viz:

800 Rose Hill Drive - Apartments
304-308 Ridge Street - Office, stores, shops
810-812 Page Street - Duplex
814-816 Page Street - Duplex
804-806 Page Street - Duplex
801 Ridge Street - Apartments
740 1st Street - Duplex
752 Ridge Street - Apartments
205 Lankford Avenue - House
1401 Gordon Avenue - Home
332-336 10th Street - 2 Duplex

And on that date plaintiff was the owner in fee of other real properties which he has since sold and conveyed with general warranty and English Covenants of Title, viz:

| LOCATION | GRANTEE |
| --- | --- |
| 410 Dice Street | Kevin L. Smith |
| 406 Dice Street | Kevin L. Smith |
| 1102 Page Street | William Joseph Carter<br>Alma Rebecca Carter,<br>h & w |
| 305 10-1/2 Street | Mary N. Nightengale &<br>Barbara J. Nicholas |
| 306 11th Street, NW | Suzie W. Thomas |
| 1003 Page Street | Mary E. Burns |

II

2. On June 3, 1983 in an action for alleged defamation, styled W. Bedford Moore, III, plaintiff, vs James N. Fleming, defendant, the Circuit Court of the County of Albemarle, by the hand of the trial judge, the Honorable F. W. Harkrader, entered judgment against James N. Fleming and in favor of W. Bedford Moore, III, for the sum of $100,000 in compensatory damages and $250,000 in punitive damages together with interest on the $250,000 award at the rate of 12% per year from January 16, 1976. The judgment order suspended execution to permit timely appeal to the Supreme Court of Virginia

provided the defendant therein or someone for him within thirty days would file an appeal bond in penalty of $250,000, with surety approved by the judge. A copy of said order, marked Exhibit A, is herewith filed.

3. Before the expiration of the Thirtieth day (Sunday, 3 July 1983) and the next day thereafter that was not a legal holiday, the defendant Moore and his attorneys, the defendants Smith, Taggart, Gibson and Albro, caused said judgment to be docketed on 6 June 1983 in the office of the Clerk of this Court in Judgment Docket Book No. 17 at page 37.

4. On 5 July 1983 the instant plaintiff (Fleming) filed and the trial judge approved his appeal bond secured by Irrevocable Letter of Credit issued by Albemarle Bank and Trust Company dated July 1, 1983 making available by sight draft an aggregate amount of $250,000. A

copy of the Appeal Bond, a copy of the Irrevocable Letter of Credit and a copy of the Order of the court's approval thereof, marked Exhibit B, are herewith filed.

5. In compliance with an order of the Supreme Court of Virginia date 7 June 1984, the instant plaintiff (Fleming) on 22 June 1984 filed with said trial court his bond for the additional sum of $460,000 with surety approved by the trial judge without objection from W. Bedford Moore, III, or his attorneys. A copy of said bond is herewith filed, marked Exhibit C.

6. Pursuant to the opinion of the Supreme Court of Virginia, dated and published 1 February 1985 sub nom The Gazette, Inc. v. Harris, 229 Va. 783, 325 S.E.2d 713, and pursuant to the mandate thereon in Fleming v. Moore, the Circuit Court of the County of Albemarle on 13 May 1985, without protest or exception from W.

Bedford Moore, III, entered its order requiring remittitur of one-third of the compensatory damage award of $100,000 and one-third of the punitive damage award of $250,000, resulting in awards totaling $233,333.34 without pre-judgment interest on either award. The order suspended execution to permit timely appeal to the Supreme Court of Virginia provided the defendant therein or someone for him within thirty days would file an appeal bond approved by the judge in the penalty of $233,000; and said judgment order provided for the release of the two appeal bonds previously filed. A copy of the 13 May 1985 Final Judgment Order, marked Exhibit D, is herewith filed.

7. On 11 June 1985 the instant plaintiff (Fleming) filed his appeal bond secured by Irrevocable Letter of Credit issued by Albemarle Bank and Trust Company under date of June 11, 1985 making

available by sight draft an aggregate amount of $233,000.00. A copy of the Appeal Bond and a copy of the Irrevocable Letter of Credit, marked Exhibit E, are herewith filed.

8. Pursuant to order of the Supreme Court of Virginia dated 2 May 1986 increasing the amount of bond to $258,700 and requiring the additional bond, with sufficient surety, to be filed by the appellant, Fleming, or someone for him within fifteen days, the instant plaintiff (Fleming) on 12 May 1986 filed with the Clerk of the Circuit Court of Albemarle County his appeal bond and interest bearing Certificate of Deposit of Consolidated Bank and Trust Company of Richmond, Virginia No. 11280 dated May 12, 1986 evidencing the deposit of $25,700 to be paid to the Circuit Court of Albemarle County one year after date. A copy of said [additional] Appeal Bond and a copy

of said Certificate of Deposit, marked Exhibit F, are herewith filed.

III

9. On 6 June 1983 and at all times thereafter the defendants and each of them knew that W. Bedford Moore, III, did not have and has never had a right to execution of his judgment against James N. Fleming or a lien against any real property of James N. Fleming or a right to docket any judgment or to have any judgment docketed in the Clerk's Office of this Court so as to give the appearance of a judgment lien encumbering real property of James N. Fleming situate in the City of Charlottesville.

10. Nevertheless, the defendants did maliciously, unjustly, and unlawfully conspire together to the end of harassing and oppressing the plaintiff (Fleming) and effecting his financial ruin by causing said judgment to be docketed in the

Clerk's Office of this Court and causing the public record falsely to show that the real property in the City of Charlottesville belonging to James N. Fleming is encumbered by a judgment for $571,250 and costs and interest on $350,000 at 12% per annum from 3 June 1983, and thereby to discourage persons from purchasing such properties as Fleming might otherwise sell or from accepting an encumbrance of said properties as indemnification of sureties on Fleming's appeal bonds or from making secured or unsecured loans of money to Fleming or otherwise extending credit to him.

11. In the execution of such conspiracy and solely for the purposes aforesaid, the defendants on 6 June 1983 did maliciously, unjustly and unlawfully cause said judgment of 3 June 1983 to be docketed in the Clerk's Office of the Circuit Court of the City of

Charlottesville and, except as is next shown, said defendants have thereafter failed and refused to release, alter or amend or cause the release, alteration or amendment of the docket entry which falsely indicates that all real properties in the City of Charlottesville which are owned by James N. Fleming are encumbered by a judgment for $571,250 and costs and interest on $350,000 at 12% per annum from 3 June 1983.

12. On 2 May 1986, as a means of terminating an action then pending in this Court styled Kevin L. Smith vs. Chicago Title Insurance Company, et al, to which the court, on its own motion, made the defendant Moore a party defendant, the instant defendants caused said judgment to be "Released only as to two parcels, namely, TM 29 parcel 119 known as 410 Dice Street conveyed by James N. Fleming to Kevin L. Smith by deed recorded in D. B.

441, p. 810; and TM 29 parcel 122 known as 406 Dice Street conveyed by James N. Fleming to Kevin L. Smith by deed recorded in D. B. 441, p. 815, and no other parcels."

13. Said defendants on 2 May 1986 did willfully, maliciously, unjustly and unlawfully refuse to fully release or cancel said judgment docket entry, notwithstanding the requests of Fleming's counsel in open court on 14 April 1986 made to the defendant's through the defendant Albro that all of the properties of James N. Fleming and his grantees be released from the apparent lien of the judgment.

14. The docket entry has resulted and continues to result in damage and injury to the plaintiff herein.

15. Plaintiff is, and at all times mentioned herein was and had been, a realtor; and through the years a

considerable part of his income has resulted from his buying and selling real estate.

16. Before the judgment was docketed as aforesaid, plaintiff's credit in the business and banking community in the City of Charlottesville and County of Albemarle has been such that he had borrowed for working capital as much as $200,000 on his unsecured note.

17. For lack of available cash, plaintiff has had to forego numerous opportunities to purchase real property and, with or without reconditioning same, to sell such property as a profit.

18. On one such occasion, plaintiff had an opportunity to purchase, and but for said judgment docket entry, would have purchased, certain real property in the City of Charlottesville, known as Odd Fellows Hall for $75,000; and, after refurbishing same at cost of less than

$20,000 plaintiff within six months after such purchase could have sold said property for $150,000.

19. Moreover, as a direct result of the said actions and inaction of the defendants, plaintiff incurred an expense of $1,669 in defending the above-mentioned action, styled Kevin L. Smith vs. Chicago Title Insurance Company, in which the court, on its own motion, made this plaintiff a party defendant.

WHEREFORE: Plaintiff prays judgment against the defendants, jointly and severally, in the sum of $250,000 for compensatory damages and in the further sum of $500,000 for punitive damages.

JAMES N. FLEMING, Plaintiff

By:_____
Of Counsel

(Exhibit A)

V I R G I N I A :

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

| | | |
|---|---|---|
| W. BEDFORD MOORE, III, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | AT LAW NO. 976-L |
| v. | ) | |
| | ) | |
| JAMES N. FLEMING, | ) | |
| | ) | |
| Defendant. | ) | |

FINAL JUDGMENT ORDER

On October 21, 1982 came the parties, in person and by counsel, and also a civil panel pursuant to a venire facias heretofore issued. The venire was duly sworn and examined by the Court. One member of the venire was excused for cause by the Court and replaced by one additional member who was duly sworn and examined. Counsel for the Plaintiff and counsel for the Defendant each alternately struck three members from the panel, leaving seven veniremen. Defendant moved

to dismiss the venire so constituted on the grounds that the plaintiff struck the only two blacks on the venire and that no blacks remained in the venire after such strikes, which motion was overruled by the Court.

After the opening statements of counsel and the presentation of Plaintiff's evidence, counsel for Defendant moved to strike the Plaintiff's evidence, which motion was argued by counsel, duly considered by the Court and overruled, to which ruling the Defendant objected and noted his exceptions. The Defendant then introduced his evidence and rested. Plaintiff introduced evidence in rebuttal and rested, whereupon Defendant renewed his motion to strike Plaintiff's evidence, which motion was overruled by the Court.

Whereupon, the Court received proposed instructions from counsel for

Plaintiff and counsel and Defendant, granted some, amended some, and refused some. Counsel for the parties noted their exceptions and objections regarding the instructions. Thereupon, the Court instructed the jury and counsel made their closing arguments.

The jury retired from the courtroom to consider its verdict.

After due deliberation, the jury returned to the courtroom with the following written verdict:

> We, the jury, upon the law and the evidence, we find our verdict for the plaintiff, W. Bedford Moore, III, against the defendant and award him compensatory damages in the amount of $100,000.00 and punitive damages in the amount of $250,000.00, together with interest on the amount of $250,000.00 at the rate of 12% per year from January 16, 1976.
>
> Mimi E. Hirsch, Foreman.

Whereupon, the defendant orally moved the Court to set aside the verdict of the jury as contrary to the law and the

evidence and enter judgment for the Defendant, which motion the Court denied with leave for defendant to file a written motion to set aside the verdict or in the alternative for a new trial. Defendant thereafter filed a written Motion To Set Aside Verdict And Enter Judgment for Fleming Or, In The Alternative, For A New Trial together with supporting memoranda. Defendant, in turn, filed a Memorandum In Opposition To Motion To Set Aside Verdict For a New Trial. By letter dated February 25, 1983 the Court requested argument ore tenus from counsel for the parties limited to the question of whether the court should order remittitur. After consideration, the Court denied Defendant's Written post-trial Motion to which action of the court the Defendant objects. The opinion of the Court is found in a letter to counsel dated April

21, 1983 which is made a part of the record.

It is ADJUDGED, ORDERED and DECREED that the Plaintiff have judgment against the Defendant, James N. Fleming, in accordance with the aforesaid verdict of the jury in the sum of Three Hundred Fifty Thousand Dollars ($350,000.00) and costs, and interest at the rate of twelve (12) percent per annum on the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) from January 16, 1976.

It is FURTHER ADJUDGED, ORDERED AND DECREED that, pursuant to Rule 5:9, Rules of the Supreme Court of Virginia, the transcript of hearings ore tenus held on January 29, 1982, October 7, 1982 and March 28, 1983, and the transcript of the trial held on October 21 and 22, 1982, be and the same are hereby made part of the record in this case.

Defendant having indicated his intention to appeal this order to the Supreme Court and having moved the Court to suspend execution of the judgment entered herein, the Court hereby ORDERS that execution of this judgment is suspended so long as Defendant timely prosecutes the appeal and thereafter so long as the matter is under consideration by the Supreme Court, provided however that Defendant or someone for him shall fine an appeal bond in the Office of the Clerk of this Court within thirty (30) days of the entry of this order, with surety approved by the Judge of this Court, in the penalty of two hundred fifty thousand Dollars ($250,000.00) reciting this judgment, and Defendant's intention to present a petition for appeal and the other conditions set forth in Section

8.01-676(A) of the Code of Virginia (1950), as amended.

ENTER: /s/ F. W. Harkrader, Jr.

DATE: 6/3/83

***

(Exhibit B)

* * *

APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS, that we, James N. Fleming, as principal and as surety an Irrevocable Letter of Credit No. LC29-S-08881 issued on July 1, 1983 by Albemarle Bank and Trust Company, a Virginia corporation, payable to the Commonwealth of Virginia under certain specified terms and conditions, are held and rmly bound unto the Commonwealth of Virginia in the sum of $250,000.00, to the payment whereof well and truly to be made we bind ourselves, our heirs and personal

representatives, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas on June 3, 1983, judgment was entered in the Circuit Court of Albemarle County, in favor of W. Bedford Moore, III, against James N. Fleming in the sum of $350,000.00 with prejudgment interest on $250,000.00 of such sum beginning on January 1, 1976, and

WHEREAS, on June 3, 1983, the Court, in order to allow James N. Fleming to petition for appeal from the judgment of the Court, entered an Order suspending the execution of the judgment so long as James N. Fleming timely prosecutes his appeal and thereafter so long as the matter is under consideration by the Supreme Court of Virginia, and

WHEREAS, it is the intention of James N. Fleming to present a petition for

appeal from the final judgment of this case to the Supreme Court of Virginia,

NOW THEREFORE, if James N. Fleming shall perform and satisfy the judgment or the part thereof on which proceedings are stayed, in case such judgment or such part be affirmed in whole or in part, or the appeal not be timely prosecuted, or the appeal be denied, and shall pay all damages, costs and fees which may be awarded against James N. Fleming in the Supreme Court of Virginia and all actual damages incurred in consequence of this suspension; then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, James N. Fleming has caused this Appeal Bond to be signed and his seal to be affixed as principal and as surety the Irrevocable Letter of Credit No. LC29-S-0881 issued on July 1, 1983 by Albemarle Bank and Trust Company

attested by the undersigned officer of Albemarle Bank and Trust Company.

/s/ James N. Fleming (SEAL)
James N. Fleming

This Appeal Bond is secured by Irrevocable Letter of Credit No. LC29-S-08881 issued on July 1, 1983 by Albemarle Bank and Trust Company, a Virginia corporation, and the undersigned officer of Albemarle Bank and Trust Company affirms that a true copy of such Irrevocable Letter of Credit is attached hereto as Exhibit A and that Albemarle Bank and Trust Company will honor the obligations of such Irrevocable Letter of Credit as the terms and conditions set forth herein.

Albemarle Bank & Trust Co.

By: s/ William K. King, President (SEAL)

ALBEMARLE
BANK & TRUST CO.

Date: July 1, 1983

Commonwealth of Virginia
Richmond, Va.

IRREVOCABLE LETTER OF CREDIT
NO. LC29-S-08881

Gentlemen:

We Hereby Establish Our Irrevocable Letter of Credit For The Account of Commonwealth of Virginia available by draft on us at sight up to an aggregate amount of $250,000.00, if accompanied by a court order entered in a suit styled W. Bedford Moore III v. James N. Fleming, Designated Law No. 976-L in the Circuit Court of Albemarle County, granting James N. Fleming a voluntary dismissal of his appeal to the Supreme Court of Virginia, denying the petition for appeal filed by James N. Fleming in the Supreme Court of Virginia, or affirming in whole or in part the judgement entered against James N.

Fleming by Final Judgement Order entered June 3, 1983 in the Circuit Court of Albemarle County. In the event that such judgement be affirmed in part in an aggregate amount less than $250,000.00, the drawing rights of the Commonwealth of Virginia under this Irrevocable Letter of Credit shall not exceed the aggregate amount in which such judgement is affirmed.

It is further provided, however, that in the event that the Supreme Court of Virginia affirms in whole or in part the judgement entered against James N. Fleming by Final Judgement Order entered June 3, 1983 in the Circuit Court of Albemarle County, and James N. Fleming shall within 30 days thereafter properly institute an appeal or petition for writ of certiorari from the mandate of the Supreme Court of Virginia and obtain a stay of supercedeas from execution on such

mandate together with an appropriate bond if such be a condition of the stay or supercedeas, then the Commonwealth of Virginia shall have no drawing rights under this Irrevocable Letter of Credit.

All drafts drawn under this credit must contain the clause "drawn under Albemarle Bank and Trust Co. irrevocable letter of credit number LC29-S-08881, dated July 1, 1983, and must be presented at our office at 1425 Seminole Trail, Charlottesville, Virginia.

We hereby agree with the Drawers, endorsers and bona fide holder of drafts under and in compliance with the terms of this credit and that the same will be duly honored on due presentation.

This Irrevocable Letter of Credit shall be valid for the duration of any and all appeals taken by James N. Fleming from the judgement entered against him in the suit styled W. Bedford Moore III v. James

N. Fleming Designated Law No. 976-L in the Circuit Court of Albemarle County by Final Judgement Order entered on June 3, 1983. Each drawing shall reduce the amount of this credit dollar for dollar.

This original letter of credit must accompany the draft which exhausts credit and must be surrendered concurrently with the payment of such draft.

The negotiation of any draft under this letter of credit shall be deemed a warranty to Albemarle Bank and Trust Co. by the beneficiary that the terms and conditions expressed herein have been fulfilled.

Very truly yours,
Albemarle Bank & Trust Co.

By /s/ William K. King

Title President

* * *

ORDER
[Entered July 5, 1983]

On motion of James N. Fleming, by counsel, for entry of an Order approving an appeal bond with appropriate surety pursuant to the Final Judgment Order entered by the Court on July 3, 1983 and Va. Code Ann. 8.01-676, consented to by W. Bedford Moore, III, by counsel, and deeming it just and proper so to do.

It is ORDERED that the appeal bond with surety filed with the Clerk of this Court by James N. Fleming be, and the same is hereby, approved. A copy of such appeal bond with surety is attached as Exhibit A and made a part hereof.

ENTER:

/s/ Herbert A. Pickford
Judge, Circuit Court of
Albemarle County, Virginia

7/5/83

[Exhibit C]

APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, James N. Fleming, principal, and Wendell Wood and Marlene Wood, his wife, surety, are held and firmly bound unto W. Bedford Moore, III, in the sum of Four Hundred Sixty Thousand Dollars and 00/100 ($460,000.00) to the payment of which we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally firmly by these presents.

The condition of this obligation is such, that whereas the Supreme Court of Virginia on the 7th day of June, 1984, awarded an appeal and suspension of judgment from a judgment rendered against James N. Fleming by the Circuit Court of Albemarle County, on the 3d day of June, 1983, upon James N. Fleming, or someone for him, filing an additional appeal bond

with sufficient security in the clerk's office of the Circuit Court of Albemarle County, in the penalty of Four Hundred Sixty Thousand Dollars and 00/100 ($460,000.00) within fifteen (15) days of the date of the order awarding the appeal, with condition as the law directs.

Now, therefore, if the said principal, James N. Fleming, shall perform and satisfy said judgment or the part thereof proceedings on which are stayed, in case such judgment or such part be affirmed in whole or in part, and shall pay all damages, costs, and fees which may be awarded against him in the Supreme Court of Virginia and all actual damages incurred in consequence of the suspension then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, the said James N. Fleming, principal, and Wendell Wood

and Marlene Wood, his wife, surety, have hereunto set their hands an seals this 5th day of July, 1984.

/s/ James N. Fleming (SEAL)
Principal

/s/ Wendell Wood (SEAL)
Surety

/s/ Marlene C. Wood (SEAL)
Surety

[Exhibit D]

FINAL JUDGMENT ORDER
[Entered May 13, 1985]

On April 16, 1985 came the parties, by counsel, pursuant to the mandate of the Supreme Court of Virginia in Record Number 831446 dated February 1, 1985, in which this case was remanded to the Circuit Court of Albemarle County for further proceedings consistent with the written opinion of the Supreme Court. In that

opinion, the Supreme Court of Virginia affirmed the compensatory and punitive liability of James N. Fleming ("Fleming") but reversed both damage awards as excessive. The Supreme Court of Virginia directed this Court to require W. Bedford Moore, III ("Moore") to remit a "substantial part" of his compensatory award and a "substantial part" of his punitive award, or else submit to a new trial on the issue of damages only.

For the reasons stated by this Court from the bench at the conclusion of the argument of counsel, the transcript of which hearing is hereby made a part of the record, it is ADJUDGED, ORDERED and DECREED that Moore shall submit to a new trial on the issue of damages only or shall remit one-third of the compensatory damage award of $100,000 and one-third of the punitive damage award of $250,000, resulting in a compensatory damage award

of $66,666.67 and a punitive damage award of $166,666.67. Plaintiff's request for the award of prejudgment interest on the resulting compensatory damage award is denied.

The Court having ordered remittitur of damages as noted herein, Moore, by counsel, pursuant to Virginia Code 8.01-383.1, stated in open court that Moore accepts the remittitur and judgment of the court for the reduced sums, without protest or exception. Therefore,

It is ADJUDGED, ORDERED and DECREED, that the plaintiff, W. Bedford Moore, III, have judgment against the defendant, James N. Fleming, in accordance with the aforesaid judgment of the Court in the sum of TWO HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE AND 34/100 DOLLARS ($233,333.34). It is further ADJUDGED, ORDERED and DECREED that pursuant to Rule 5:9 of the Supreme Court of Virginia the

transcript of the hearing of April 16, 1985 ore tenus be, and the same hereby is, made a part of the record in this case.

Fleming having indicated his intention to appeal this Final Judgment Order, and having moved the Court to suspend execution of this judgment, the Court ORDERS that execution of this judgment is suspended so long as Fleming timely prosecutes his appeals and thereafter so long as the matter is under consideration by the Supreme Court of Virginia; provided, however, that Fleming or someone for him shall file in the office of the Clerk of this Court an appeal bond approved by the Judge of this Court within thirty (30) days of the entry of this Order in the penalty of Two hundred thirty-three thousand Dollars ($233,000.00) reciting this judgment and Fleming's intention to appeal this Final

Judgment Order. This Court further ORDERS that the two appeal bonds previously filed in this matter shall be released 30 days after the entry of this Order and the Clerk of this Court shall return them to counsel for Fleming.

ENTER /s/ F. W. Harkrader, Jr.
Judge

DATE: 5/13/85

[Exhibit E]

APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS that James N. Fleming, Principal, is held and firmly bound unto W. Bedford Moore, III in the sum of $233,333.32, and that Albemarle Bank and Trust Company, Surety, is held and firmly bound unto W. Bedford Moore, III in accordance with the terms and conditions of the attached Irrevocable Letter of Credit, to the payment of which

we bind ourselves, our heirs, successors, personal representatives, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS on May 13, 1985, judgment was entered in the Circuit Court of Albemarle County in favor of W. Bedford Moore, III, against James N. Fleming in the sum of $233,333.32, and

WHEREAS, on May 13, 1985, the Circuit Court of Albemarle County entered an Order suspending execution of this judgment, conditioned on the filing of this Appeal Bond to allow James N. Fleming to file and pursue if granted an appeal to the Supreme Court of Virginia, and

WHEREAS, James N. Fleming intends to file with the Supreme Court of Virginia a Petition for Appeal from the judgment of the Circuit Court of Albemarle County,

NOW, THEREFORE, if James N. Fleming shall perform and satisfy the judgment in case such judgment be affirmed in whole or in part, or his appeal is not prosecuted, or the appeal be denied and a further stay or supersedeas on execution of the judgment is not obtained, and shall pay all damages, costs, and fees which may be awarded against him, then this obligation shall be void, otherwise to remain in full force and virtue.

THIS APPEAL BOND is secured by Irrevocable Letter of Credit Number LC29-U-11117 dated June 11, 1985, issued by Albemarle Bank and Trust Company, Surety, and attached to this Appeal bond.

IN WITNESS WHEREOF, the said James N. Fleming, Principal, and Albemarle Bank and Trust Company, Surety, by its

President, have hereunto set their hands and seals, this 11 day of June, 1985.

/s/ James N. Fleming (SEAL)
JAMES N. FLEMING

ALBEMARLE BANK AND TRUST COMPANY

By: /s/ William K. King (SEAL)

Title: President

ALBEMARLE
BANK & TRUST CO.

June 11, 1985

Commonwealth of Virginia
Richmond, Va.

IRREVOCABLE LETTER OF CREDIT
NO. LC29-S-11117

Gentlemen:

We hereby establish our Irrevocable Letter of Credit for the account of W. Bedford Moore, III available by draft on us at sight up to an aggregate amount of $233,000.00, if accompanied by a court

order entered in a suit styled W. Bedford Moore III v. James N. Fleming, Designated Law No. 976-L in the Circuit Court of Albemarle County, granting a dismissal of James N. Fleming's appeal to the Supreme Court of Virginia, denying a petition for appeal filed by James N. Fleming in the Supreme Court of Virginia, or affirming in whole or in part the judgment entered against James N. Fleming by Final Judgment Order entered May 13, 1985 in the Circuit Court of Albemarle County. In the event that such judgment be affirmed in part in an aggregate amount less than $233,000.00, the drawing rights of W. Bedford Moore, III under this Irrevocable Letter of Credit shall not exceed the aggregate amount in which such judgment is affirmed.

It is further provided, however, that in the event that the Supreme Court of Virginia denies James N. Fleming's petition for appeal or affirms in whole or

in part the judgment entered against James N. Fleming by Final Judgment Order entered May 13, 1985 in the Circuit Court of Albemarle County, and James N. Fleming shall thereafter properly file with the Supreme Court of the United States an appeal or petition for writ of certiorari to the action of the Supreme Court of Virginia, and obtain a stay or supersedeas from execution on such mandate together with an appropriate bond if such be a condition of the stay or supersedeas, then W. Bedford Moore, III shall have no drawing rights under this Irrevocable Letter of Credit until such time as the Supreme Court of the United States denies James N. Fleming's appeal or petition for writ of certiorari or affirms in whole or in part the judgment entered against James N. Fleming by Final Judgment Order entered May 13, 1985, in the Circuit Court of Albemarle County.

All drafts drawn under this credit must contain the clause "drawn under Albemarle Bank and Trust Co. irrevocable letter of credit number LC29-S-11117, dated June 11, 1985," and must be presented at our office at 1425 Seminole Trail, Charlottesville, Virginia.

We hereby agree with the drawers, endorsers and bona fide holders of drafts under and in compliance with the terms of this credit and that the same will be duly honored on due presentation.

This Irrevocable Letter of Credit shall be valid for the duration of any and all appeals taken by James N. Fleming from the judgment entered against him in the suit styled W. Bedford Moore III v. James N. Fleming Designated Law No. 976-L in the Circuit Court of Albemarle County by Final Judgment Order entered on May 13, 1985. Each drawing shall reduce the amount of this credit dollar for dollar.

This original Irrevocable Letter of Credit must accompany the draft which exhausts credit and must be surrendered concurrently with the payment of such draft.

The negotiation of any draft under this Irrevocable Letter of Credit shall be deemed a warranty to Albemarle Bank and Trust Co. by the beneficiary that the terms and conditions expressed herein have been fulfilled.

Very truly yours,
Albemarle Bank & Trust Co.

By /s/ William K. King
Title President

[Exhibit F]

APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS that James N. Fleming, Principal, is held and firmly bound unto W. Bedford Moore, III in the further sum of $25,700.00, pursuant to

order of the Supreme Court of Virginia, dated 2 May 1986; to the payment of which he binds himself, his heirs, successors, personal representatives, and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS on May 13, 1985, judgment was entered in the Circuit Court of Albemarle County in favor of W. Bedford Moore, III, against James N. Fleming in the sum of $233,333.34, and

WHEREAS, on May 13, 1985, the Circuit Court of Albemarle County entered an Order suspending execution of this judgment, conditioned on the filing of Appeal Bond in penalty of $233,000 to allow James N. Fleming to file and pursue if granted an appeal to the Supreme Court of Virginia, and such bond having been filed; and

WHEREAS, the Supreme Court of Virginia, has denied such appeal and, by

order entered 28 March 1986, stayed issuance of its mandate to permit application to the Supreme Court of the United States for a writ of certiorari; and

WHEREAS, by order of 2nd May 1986 the Supreme Court of Virginia ordered that the bond be increased to $258,700,

NOW, THEREFORE, if James N. Fleming shall perform and satisfy the judgment in case such judgment be affirmed in whole or in part, or his petition for writ of certiorari will not be filed or such writ will be denied and a further stay or supersedeas on execution of the judgment is not obtained, and shall pay all damages, costs, and fees which may be awarded against him, then this obligation shall be void, otherwise to remain in full force and virtue.

THIS APPEAL BOND is secured by Certificate of Deposit dated 12 May 1986,

Numbered 11280, issued by Consolidated Bank and Trust Company, Richmond, Virginia, for the principal sum of $25,700 payable to Circuit Court of Albemarle County, and attached to this Appeal Bond.

IN WITNESS WHEREOF, the said James N. Fleming has hereunto set his hand and seal this 12th day of May, 1986.

/s/ James N. Fleming (SEAL)
James N. Fleming

V I R G I N I A :

IN THE CIRCUIT COURT OF THE
CITY OF CHARLOTTESVILLE

JAMES N. FLEMING,

Plaintiff

v. At Law No. 3633

W. BEDFORD MOORE, III, et al,

Defendants.

DEMURRER AND MOTIONS TO DISMISS
[Filed December 4, 1986]

Come now the defendants, in person and by counsel, and for their response to the Motion for Judgment filed herein state the following:

DEMURRER

Defendants demur to the Motion for Judgment on the following grounds:

1. The allegations in the Motion for Judgment fail to set forth a cause of action upon which relief may be granted in that no cause of action for slander of title exists in Virginia.

2. Plaintiff fails to set forth in the Motion for Judgment any statements allegedly made by any of the defendants which are false.

3. Plaintiff fails to set forth in the Motion for Judgment any statements allegedly made by any of the defendants which are defamatory.

4. Plaintiff fails to allege special damages or any damage resulting from the loss of any sale of plaintiff's property which was the subject of negotiations or proceedings for sale at the time of the alleged slander.

MOTION TO DISMISS

1. The causes of action set forth in plaintiff's Motion for Judgment are barred by the applicable statutes of limitations.

2. The acts and statements of the defendants which plaintiff alleges form

the bases of his causes of action are absolutely privileged in that they were made and performed in the context of judicial proceedings.

3. The acts and statements of the defendants which plaintiff alleges form the bases of his causes of action are absolutely privileged in that they were made pursuant to the authority of valid state statutes.

Respectfully submitted,

W. BEDFORD MOORE, III
LLOYD T. SMITH, JR.
JOHN K. TAGGART, III
M. E. GIBSON, JR.
THOMAS E. ALBRO

By Counsel

ORDER SUSTAINING DEMURRER
AND DISMISSING CASE
[Entered June 4, 1987]

This matter came before the Court on the Motion for Judgment filed by the

plaintiff, the Demurrer and the Motion to Dismiss filed by the defendants, the defendants' Memorandum in Support of Demurrer and Motion to Dismiss, plaintiff's Memorandum and plaintiff's Supplemental Memorandum and was argued by counsel on May 13, 1987.

This Court, having considered the pleadings filed herein, the authorities cited, and the arguments of counsel, finds as follows:

1. The defendants did not publish false or defamatory words.
2. Docketing of the Judgment did not disparage plaintiff's property.
3. The plaintiff did not suffer special damages.
4. Docketing of the Judgment is an absolutely privileged publication.

5. Plaintiff's action is not barred by the Statute of Limitations.

6. Plaintiff failed to take advantage of the relief afforded by 8.01-455, Code of Virginia.

7. Defendant attorneys for defendant Moore are not liable to plaintiff but may have been liable to defendant Moore had they failed to docket the Judgment.

It is therefore ORDERED that the Demurrer and Motion to Dismiss be, and hereby are, GRANTED and that plaintiff's Motion for Judgment is hereby DISMISSED with prejudice. Plaintiff shall not be granted leave to amend his Motion for Judgment since no good purpose will be served by amendment.

This matter is therefore ORDERED stricken from the docket and ended.

Entered this 4th day of June, 1987.

/s/ D. W. Murphey
D. W. Murphey, Circuit Court Judge
(Sitting by Designation)

IN THE SUPREME COURT OF VIRGINIA

JAMES N. FLEMING,

Appellant,

v. RECORD NO. 871014
CIRCUIT COURT NO. 3633

W. BEDFORD MOORE, III, et al,

Appellees.

PETITION FOR REHEARING

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

The petition of James N. Fleming, Appellant, that the court will rehear and reconsider his petition for appeal and its refusal by order entered on 18 November 1988, shows:

At the conclusion of the arguments in this case before a panel of justices of this Court on October 4, 1988, the presiding justice, the Honorable Richard H. Poff, aptly remarked that this is a case of first impression and would be decided by the full court.

The crucial issue stated and argued in the Petition for Appeal is:

> Absent statutory basis for attachment, may a judgment become a lien while execution thereon is suspended?

Here, execution was suspended as of the date the judgment order was entered in the defamation action (June 3, 1983); the notice of appeal, the appeal bond, and the petition for appeal having been timely filed. Accordingly, no writ of fieri facias was issued to encumber the appellant's personal property or to give the appearance of a lien against his personal property.

This Court's refusal of an appeal, from the summary dismissal of the petitioner's action for slander of title to his real property, infers that although payment of the defamation judgment was adequately secured by an appeal bond, the plaintiff in the defamation action had a right to obtain an abstract of judgment

from the trial court and cause same to be docketed in another jurisdiction; thereby causing the public record to show a cloud on the title to real properties owned by the defamation defendant, a real estate developer. See Fleming v. Moore, sub nom, The Gazette v. Harris, 229 Va. 1, 325 S.E.2d 713 (1985).

To demonstrate the tension between Code Sections 8.01-458 and 8.01-461 on one hand and Code Section 8.01-676 (now 8.01-676.1) and this Court's Rule 1:1 on the other hand, and the resulting confusion, counsel for appellant made four inquiries of each of the clerks of the circuit courts of this State:

> Do you delay docketing a judgment for 21 days?
>
> Do you delay issuing an abstract of judgment for 21 days?
>
> Do you docket a judgment if execution thereon is suspended?
>
> Do you issue an abstract of judgment if execution thereon is suspended?

Counsel's form letter and a chart giving verbatim each response received to date are attached to each copy of this petition. A photocopy of each response will be furnished counsel for appellee simultaneously with service of this petition; and the original responses will be filed with the Court simultaneously with the filing of this petition.

Seventy-one of the 121 clerks responded. No response was received from Albemarle where the defamation judgment against petitioner was entered or from Charlottesville where the judgment was docketed.

Routinely, the clerks at New Kent, Petersburg, and Winchester will neither docket nor issue an abstract during the 21 days when the judgment remains under the control of the court or while execution thereon is suspended. Their interpretation of Code 8.01-676.1 C and

antecedent statutes gives to the unsuccessful defendant's title to real property the same protection against an unwarranted cloud as, throughout the Commonwealth, the law gives to such defendant's title to personal property when execution is suspended. At least thirty-five other clerks refrain from docketing or issuing abstracts of judgments on which execution is suspended.

To the questions whether she would docket or issue an abstract of a judgment on which the execution is suspended, one clerk, who served as deputy for twenty years and as clerk for twelve years, gave this candid response:

> "This situation has never come up since I have been Clerk but I would not know what to do. It should be clarified."

At least twenty-one clerks will docket and issue abstract of a judgment, notwithstanding the suspension of execution thereon.

If the General Assembly had enacted a statute mandating such varied practices in the several cities and counties, the Constitutional deficiency would be immediately apparent. Moreover, there is no conceivable rationale for giving absolute protection to personal property while leaving real property exposed to the appearance, if not the reality, of a lien. As in Bradford v. Nature Conservancy, 224 Va. 181, 193, 294 S.E.2d 866 (1982), this Court observed, the equal protection clause of the Fourteenth Amendment to the Federal Constitution requires statutory classifications to have a rational basis.

This petitioner timely satisfied every condition for suspension of execution on the judgment against him which, when entered by the Circuit Court of Albemarle County, was approximately a half-million dollars (including pre-judgment interest). Unquestionably, he

has been injured by the docketing of that judgment in the City of Charlottesville where, principally, he conducted his business of buying, developing, and selling real estate. Had the judgment been recovered against him in New Kent, Petersburg, or Winchester or in any other of the 38 or more jurisdictions where a suspension of execution leaves a judgment debtor in unfettered control of his real property as well as his personal property, the petitioner could have continued in the business which depends upon sales of real estate. The denial of equal protection of the laws is obvious.

The varying degrees of protection to freeholders, which the clerks of circuit courts will extend upon suspension of execution, suggest analogy with Reynolds v. Sims, 377 U.S. 533 (1964) where, in requiring legislative redistricting, the Court observed:

> One must ever be aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." (377 U.S. at 563).

For at least three reasons, mandated by the Fourteenth Amendment to the Federal Constitution and by Section 11 of Article I (Bill of Rights) of the Constitution of Virginia, the petitioner's appeal should be allowed.

I

In violation of the Fourteenth Amendment to the Federal Constitution, the petitioner is denied the equal protection of the laws because suspension of execution of the defamation judgment entered against him by the Circuit Court of Albemarle County gave no protection to the petitioner's clear title to his real estate; although suspension of execution on a similar judgment entered by any one of at least 45 other circuit courts would have fully protected the judgment debtor's clear title to real estate located in

another jurisdiction while his appeal was pending.

II

After petitioner had given bond with approved surety, conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of the suspension mandated by statute, the cloud of the apparent lien of a judgment for more than $500,000 and the consequent diminution of his ability to sell, trade or encumber his real estate much of which he had acquired for such purposes in the regular course of his business, was a deprivation of his property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution.

III

The election of this Court to refuse the petition for appeal, without stating and publishing its reasons for declining

to resolve the varied and conflicting official interpretations of the effect of suspension of execution, would make deliberate, final, and conclusive the action of the State by which petitioner is deprived of property without due process of law and is denied the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

Respectfully submitted,

JAMES N. FLEMING, Petitioner

By Counsel: /s/ S. W. Tucker

SUPPLEMENT TO PENDING
PETITION FOR REHEARING

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

Praying leave of the Court to supplement the supporting data to his pending petition for rehearing, the appellant shows:

Since 2 December 1988 when Petition for Rehearing was served and filed, counsel have received fifteen additional responses to the 22 November 1988 inquiries concerning the practices of the clerks of circuit courts in docketing and issuing abstracts of judgments while they remain under the control of the court or when execution thereon is suspended. These additional responses will be filed with the Court simultaneously with the filing of the Supplement; and photocopy of each additional response will be furnished counsel for the appellees simultaneously with the filing of this Supplement. Attached to each copy of this Supplement is a photo-copy of the chart submitted with the Petition for Rehearing on which the delayed responses are copied in handwriting.

The response of the Clerk of the Circuit Court of Albemarle County

indicates that the abstract pertinent to the case at bar was issued contrary to the policy of her office. Had such policy been followed in this case, the appellant would not have sustained the damages for which he seeks recovery.

Respectfully submitted,

JAMES N. FLEMING, Petitioner

By Counsel: /s/ S. W. Tucker

Law Offices
HILL, TUCKER & MARSH
509 North Third Street
P. O. Box 27363
Richmond, Virginia 23261-7363
Telephone (804) 648-9073

*** ***

22 November 1988

Clerk of Circuit Court
Albemarle County
Charlottesville, VA 22901

Dear Clerk (or Deputy):

In our 121 clerks' offices, practices vary as to when a judgment will be docketed pursuant to Code 8.01-446 and as to when an abstract of judgment will be issued pursuant to Code 8.01-461. Some (but not all) clerks read Rule 1:1 as delaying docketing or issuance of abstract for 21 days. Some (but not all) clerks will not docket a judgment or issue an abstract while execution is suspended pending appeal. In a case yet pending, we hope to persuade the Supreme court to settle these questions. Although no clerk is a party to that litigation, we feel that no clerk should have to choose risk of suit by a judgment creditor or risk of suit by a judgment debtor.

Please write "yes" or "no" after each of the four questions below and date, sign and promptly return this in the enclosed postage prepaid envelope.

Very truly yours,

/s/ S. W. Tucker

of

HILL, TUCKER & MARSH

SWT:faz

Do you delay docketing a judgment for 21 days? No

Do you delay issuing an abstract of judgment for 21 days? No

Do you docket a judgment if execution thereon is suspended? No

Do you issue an abstract of judgment if execution thereon is suspended? No

Date: November 30, 1988

/s/ Shelby J. Marshall
Clerk of Circuit Court of
Albemarle County

| CIRCUIT | COUNTY OR CITY | Delay docketing for 21 days? | Delay abstract for 21 days? | When execution suspended: Docket? | When execution suspended: Issue Abstract? |
|---|---|---|---|---|---|
| First | Chesapeake | No | Yes | No | No |
| Second | Virginia Beach | No | No | No | No |
| | Accomack | No | No | Yes | Yes |
| | Northampton | No | No | No | No |
| Third | Portsmouth | No | No | Yes | Yes |
| Fourth | Norfolk | No | No | No | No |
| Fifth | Isle of Wight | No | No | Yes | No |
| | Southampton | NO | No | No | No |
| | Suffolk | No | Yes | Yes | Yes |
| Sixth | Hopewell | No | Yes | No | No |
| | Prince George | | | | |
| | Surry | | | | |
| | Sussex | No* | No | No | No |
| | Greensville | | | | |
| | Brunswick | | | | |
| Seventh | Newport News | No | No | No | Yes |

*"generally speaking"

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Eighth | Hampton | No | Yes | No | No |
| Ninth | Williamsburg/James City County | | | | |
| | York | | | | |
| | Charles City | No | Yes | No | No |
| | New Kent | Yes | Yes | No | No |
| | Gloucester | No | Yes | Yes | No |
| | Mathews | No | No | No | No |
| | Middlesex | No | Yes | No | No |
| | King William | No | No | Yes | Yes |
| | King and Queen | | | | |
| Tenth | Halifax | No | No | Yes | Yes |
| | Mecklenburg | | | | |
| | Lunenburg | No | No | No | No |
| | Charlotte | * | No | No | No |
| | Prince Edward | | | | |
| | Buckingham | No | No | No | * |
| | Cumberland | No | Yes | No | No |
| | Appomattox | | | | |

* (Charlotte) "Docketed upon request"

* (Buckingham) Depends on case

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Eleventh | Powhatan | | | | |
| | Dinwiddie | | | | |
| | Nottoway | No | No | No | No |
| | Amelia | Yes | No | Yes | Yes* |
| | Petersburg | Yes | Yes | No | No |
| Twelfth | Chesterfield | No | * | ?a | ?b |
| | Colonial Heights | No | No | Yes | No |
| Thirteenth | Richmond City | No | No | No | Yes |
| Fourteenth | Henrico | | | | |
| Fifteenth | Caroline | | | | |
| | Essex | No | No | * | * |

*(Amelia): "With note that same has been appealed"

*(Chesterfield): Delay for 10 days:

?a I don't think we do

?b I don't think we do - but lady who handles it wasn't what exactly you meant.

*(Essex): This situation has never come up since I have been Clerk but I would not know what to do. It should be clarified.

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Fifteenth (Cont'd) | Fredericksburg | No | No | Yes | No |
| | Hanover | No | No | Yes* | No |
| | King George | No | No | No | No |
| | Lancaster | No | * | Yes | *[2] |
| | Northumberland | Yes | Yes | No | No |
| | Richmond | No | Yes | No | No |
| | Spotsylvania | | | | |
| | Stafford | | | | |
| | Westmoreland | | | | |
| Sixteenth | Charlottesville | | | | |
| | Madison | No | No | Yes* | Yes* |
| | Louisa | No | No | No | No |
| | Greene | No | No | No | No |
| | Orange | No | No | No | No |
| | Albemarle | No | No | No | No |

*(Hanover): Note on Jud. book.
*(Lancaster): Depends on atty in case.
*[2]The above questions depend a lot what the atty may request and how all persons read the code a little different.
s/Bertha G. Abbott
Sorry I am late. Happy Holiday
**(Madison): Unless order directs otherwise see 1986-87 opinion of the A-G pg 47

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Sixteenth (Cont'd) | Goochland | No | No | Yes | Yes |
| | Culpeper | | | | |
| | Fluvanna | No | No | Yes | Yes |
| Seventeenth | Arlington | | | | |
| Eighteenth | Alexandria | | | | |
| Nineteenth | Fairfax | No | No | Yes | Yes* |
| Twentieth | Fauquier | No | Yes | Yes | Yes |
| | Loudoun | No | No | Yes | Yes |
| | Rappahannock | No | No | No | No |
| Twenty-First | Henry | | | | |
| | Martinsville | No | No | Yes | Yes |
| | Patrick | No | No | No | No |

*(Fairfax): Yes - noting that the execution is suspended.

*(Martinsville): Code of Virginia Sec. 8.01-461 Opinion Atty Gen 1986-87 page 47.

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Twenty-Second | Danville | No | No | N/A | N/A |
| | Pittsylvania | No | No | Yes | Yes |
| | Franklin | | | | |
| Twenty-Third | Roanoke County | No | Yes | No | No |
| | Roanoke City | | | | |
| | Salem | No | No | Yes | Yes* |
| Twenty-Fourth | Lynchburg | No | No | No | No* |
| | Amherst | No | No | Yes | Yes |
| | Bedford* | No | No | Yes | No |
| | Campbell | No | No | No | No |
| | Nelson | No | No | Yes | Yes |
| Twenty-Fifth | Buena Vista | No | No | No | No |
| | Clifton Forge | No | No | * | — |

Bedford*: Judgments are docketed without delay. If appealed, notation is made on judg. lien docket and we take no further action until decision is made on appeal.

*(Salem): Yes & note on abst that execution suspended, pending appeal.

*(Lynchburg): If for any reason after docketing, the judgment is set aside, a notation is made on the judgment lien docket.

*(Clifton Forge): Has not arisen.

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Twenty-Fifth (Cont'd) | Staunton | No | Yes*[1] | No | No |
| | Waynesboro | No | No | No | No |
| | Alleghany | No | No | Yes | Yes |
| | Augusta | | | | |
| | Bath | No | No | No | No |
| | Botetourt | No | No | No | No |
| | Craig | No | No | No* | No |
| | Highland | No | No | No | No |
| | Rockbridge | No | No | No | No |
| Twenty-Sixth | Clarke | No | No | Yes | Yes |
| | Frederick | No | Yes | Yes | Yes |
| | Page | No | No | Yes | Yes |
| | Shenandoah | No | No | No | No |
| | Warren | | | | |
| | Winchester | Yes*1 | Yes | No*2 | No*3 |
| | Rockingham | No | No | No | No |

*(Craig): Would docket only if we were unaware of an appeal in another court/ jurisdiction.

*(Staunton): Unless requested to issue sooner.

*(Winchester):*1 Unless orders specifies otherwise *2 Unless ordered to contrary *3 Unless ordered to do so by Court order.

(Highland): (no signature)

| CIRCUIT | COUNTY OR CITY | | | | |
|---|---|---|---|---|---|
| Twenty-Seventh | Bland | | | | |
| | Carroll | | | | |
| | Floyd | | | | |
| | Giles | | | | |
| | Grayson | No | No | No | No |
| | Montgomery | No | No | No | No |
| | Pulaski | No | No | Yes | Yes |
| | Radford | No | Yes | * | No |
| | Wythe | | | | |
| Twenty-Eighth | Washington | No | No | No | No |
| | Smyth | No | Yes | No | No |
| | Bristol | | | | |
| Twenty-Ninth | Buchanan | | | | |
| | Dickenson | | | | |
| | Russell | No | No | Yes | Yes |
| | Tazewell | * | | | |

*(Radford): "Docket but do not execute."
(no signature)

*(Tazewell): WE DOCKET JUDGMENTS ONLY WHEN THE COURT ORDER SO DIRECTS, OR UPON THE DIRECTION OF COUNSEL, POST ENTRY OF ORDER.

| CIRCUIT | COUNTY OR CITY | | | | ---- |
|---|---|---|---|---|---|
| Thirtieth | Wise ..... | | | | |
| | Scott ..... | No | No | No | No |
| | Lee ..... | No | No | Yes | Yes* |
| Thirty-First | Prince William ..... | No | No | Yes | Yes |

*(Lee): Yes, but we note on J.L.D. book of Pending appeal, and on the Abstract.